

C→U 6/20/13

**2013 OE#3 NEGOTIATIONS  
CITY PACKAGE PROPOSAL C\***

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**TERM**

Two Year Term

**WAGES**

**Year One (1):**

2% general wage increase

**Year Two (2):**

2% general wage increase. *In the event all or part of the \$20 million savings due to the elimination of the Supplemental Retiree Benefit Reserve (SRBR) and the low cost healthcare plan implementation are not realized through the term of this agreement, the 2% general wage increase in year two (2) only will be rolled back prospectively effective the pay period upon notice that the savings will not be realized. The roll back will not be retroactive.*

**SHIFT DIFFERENTIAL**

See Attached (City Counterproposal to Union Proposal #1)

**SAFETY**

See Attached (City Proposal #17)

**CAREER DEVELOPMENT**

See Attached (City Counterproposal to Union Proposal #6)

**SICK LEAVE PAYOUT**

See Attached (City Counterproposal to Union Proposal #5)

**CALL BACK AND STANDBY PAY**

As Proposed on June 5, 2013 (City Counterproposal to Union Proposal #3 on Calculation of Overtime)

**LEAVES OF ABSENCE**

As Proposed on April 10, 2013 (City Proposal #14)

**DISABILITY LEAVE SUPPLEMENT**

As Proposed on April 10, 2013 (City Proposal #13)

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### SUBSTANCE ABUSE POLICY

As Proposed on April 17, 2013 (City Proposal #18)

### FATIGUE TIME

As Proposed on May 16, 2013 (City Counterproposal to Union Proposal #4)

### TENTATIVE AGREEMENTS

- Housekeeping - Tentative Agreement Reached on May 1, 2013
- Higher Class Pay - Tentative Agreement Reached on May 22, 2013
- Holidays - Tentative Agreement Reached on May 22, 2013
- Grievance Procedure - Tentative Agreement Reached on May 22, 2013
- Health and Dental In Lieu - Tentative Agreement Reached on May 22, 2013

### REOPENERS

- Notwithstanding any other provision of this Agreement, the parties agree to continue to meet and confer over retiree healthcare benefits and funding upon request of either party, but no earlier than January 1, 2014. This may include but is not limited to alternatives to reduce the unfunded liability and options for current employees that comply with IRS regulations.

Negotiations between the City and OE#3 shall commence within 14 days upon notice of either party, but no earlier than January 1, 2014. The City and OE#3 shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and OE#3 shall commence within 14 days upon notice from either party that any action referenced in the previous paragraph has occurred. The City and OE#3 shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

- Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over active healthcare benefits upon request of either party.

Negotiations between the City and OE#3 shall commence within 14 days upon notice from either party that any action referenced in the previous paragraph has occurred. The City and OE#3 shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

\* *This proposal is submitted in an attempt to reach a settlement. In the event the proposal is not accepted, the City reserves the right to modify, amend and/or add proposals.*

**UNION PROPOSAL #1 – SHIFT DIFFERENTIAL**

City Counterproposal:

**ARTICLE 5 WAGES AND SPECIAL PAY**

5.3 Shift Differential. Eligible employees, as defined herein, regularly assigned to work a swing shift shall be paid a shift differential of \$1.550 per hour for each eligible hour, as defined herein, to the nearest fifteen (15) minutes, of work performed. Eligible employees, as defined herein, regularly assigned to work a graveyard shift shall be paid a shift differential of \$1.65 per hour, as defined herein, to the nearest fifteen (15) minutes of work performed.

5.3.1 Eligibility and Application. To be eligible for payment of shift differential, an employee must be assigned to an on-going, regular shift of eight (8) hours or more which is regularly scheduled to start between the hours of:

- a) 2:00 p.m. and 11:59 p.m. (i.e. swing shift), or
- b) 12:00 midnight and 5:59 a.m. (i.e. graveyard shift)

If the employee's shift starts within the time period defined above and the employee works a minimum of two (2) hours within that time period, the employee shall be compensated with shift differential for the entire shift.

If the employee's shift starts within the time period defined above and the employee works less than two (2) hours within that time period, the employee shall be compensated with shift differential for the number of hours of work actually performed within that time period.

5.3.2 Except as otherwise required by applicable State or Federal law, shift differential pay shall not be included as regular compensation in computing other benefits.

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TENTATIVE AGREEMENT

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**CITY PROPOSAL #17 – SAFETY**

**Article 11 SAFETY**

City Proposed Language:

- 11.1 The City shall provide a reasonably safe and healthy working environment in accordance with applicable State and Federal laws and regulations. The Union agrees that where safety devices or protective equipment is required or furnished, its use shall be mandatory.
- 11.2 An employee who believes their work assignment is unsafe or believes a safety violation exists and for that reason refuses to perform such assignment, will first report such unsafe conditions to their immediate supervisor and try and resolve it at that level. The employee may at any time request that a union representative and an OE#3 Safety Officer be present for any part of the process. ~~shall be assigned other duties, if other duties are available, and no other employee shall be assigned the work assignment in dispute until after a determination has been made by the City's Safety Officer. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. Prior to being placed on such leave, however, the employee may request the presence of the appropriate Union representative.~~
- 11.3 If the employee is not satisfied with the response of the immediate supervisor, the employee may report the unsafe conditions to the Department Director or Designee or the Department Safety Officer and try to resolve it at that level.
- 11.43 If the employee is not satisfied with the response of the Department Director or Designee or the Department Safety Officer, the employee may request that the City make a determination as to the safeness of the work assignment in accordance with Cal/OSHA regulations. If the City is asked to make a determination, an employee will be assigned other duties if other duties are available while an investigation is underway. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the above determination. No other employee shall be assigned the work assignment in dispute until after a determination is made by the City's designated safety official. The employee's immediate supervisor shall immediately request the City's Safety Officer to make a determination as to the safeness of the work assignment in question. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to the refusal to perform. If the employee disagrees with the determination of the City's Safety Officer and continues to refuse to perform the assignment, the employee shall be assigned other duties, if such other duties are available, and a prompt request for a determination by the State of California Division of Occupational Safety and Health shall be made. Pending such determination, the assignment shall not be given to another employee. If no other duties are available, the employee shall be placed on a leave of absence without pay, pending the determination of the Division of Occupational Safety and Health. If the assignment is determined to be unsafe, the employee shall be reimbursed for any time lost due to refusal to perform.
- 11.54 No provisions of this Article shall be subject to the grievance procedures of this Agreement. If the Union is not satisfied with the City's determination, the Union can

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request to meet with the Office of Employee Relations to discuss the City's determination. The determination by the Division of Occupational Safety and Health of the safeness or unsafeness of the work assignment shall not be subject to the grievance procedure.

~~11.5 Upon request of either the employee or the representative of the Division of Occupational Safety and Health, the appropriate Union representative shall be permitted to accompany the City Safety Officer, or the representative of the Division of Occupational Safety and Health, or both, during the inspections of the questioned work assignment. Neither the employee nor the appropriate Union representative shall suffer any loss of compensation for time involved in the inspections of the questioned work assignment during their respective regularly scheduled working hours. In no event shall overtime or premium pay be paid for any time spent in such inspections.~~

~~11.6 If an employee's immediate supervisor believes that the employee is unable to safely perform a job assignment because of the employee's physical condition then the supervisor shall arrange for immediate medical evaluation of the employee's condition as it relates to the employee's ability to safely perform assigned duties. The employee shall cooperate with such medical evaluation.~~

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### UNION PROPOSAL #6 – CAREER DEVELOPMENT

City Counterproposal:

#### ARTICLE 5 WAGES AND SPECIAL PAY

5.12 Career Development. The City is committed to assisting employees with career growth and development and agrees to the following:

5.12.1 Tuition Reimbursement Program. The City will reimburse each employee 100% of expenses incurred, up to ~~\$500.00~~ \$750.00 per fiscal year, for registration, tuition and textbooks for college accredited courses which are either related to or beneficial for the employee's current position or related to or beneficial for a lateral transfer, promotion or other career opportunity within the City service. Section 4.3.1 of the City Policy Manual outlines additional details of the program. ~~This amount Of the \$750.00, up to \$500~~ may be used for non-college accredited courses, workshops, membership dues in professional associations, professional licenses, and professional certificates as approved by the Department Director or designee.

**UNION PROPOSAL #5 – SICK LEAVE PAYOUT**

City Counterproposal:

- 18.2 Any employee hired on or after January 1, 2012, shall not be eligible for sick leave payout.
- 18.3 Upon a release of claims being signed by the retiree, retroactive payments shall be made to eligible employees in the Federated City Retirement System, who retired on or after January 1, 2012 and before the date that this proposal is ratified and approved by the City Council, who were eligible for a sick leave payout at the time of their retirement under the requirements contained herein and did not receive the payout because the payouts were eliminated prior to their retirement. Retirees will be eligible for a payout of the amount of unused sick leave hours accrued as of December 31, 2011, or the date of their retirement, whichever is less. Payouts will be based on the provisions contained in Sections 18.5 and 18.6 below. This will resolve any claims related to sick leave payout upon retirement.
- 18.4 For employees hired on or before December 31, 2011, a sick leave payout shall be made to full-time and part-time benefitted employees who are members of the Federated City Retirement System at the time of retirement or death under one of the following scenarios:
- 18.4.1 Federated Retirement Plan. The employee is: a) a member of the Federated Retirement Plan, and; b) retired under the provisions cited in the plan, and; c) credited with at least 15 years of service in this retirement plan, or; d) credited with at least 10 years of service prior to a disability retirement.
- 18.4.2 Separated Employee with Vesting Rights. The employee has: a) separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 and; b) retained vesting rights in a retirement system according to provisions in the SJMC, and; c) following such separation, qualifies for retirement and retires under the provisions cited in the code, and; d) has at the time of retirement credit for at least 15 years of service in the applicable retirement plan.
- 18.4.3 Death During Service. The estate of any full-time employee who dies while in City service and prior to retirement, even though the employee is not credited with at least 15 years of service in any applicable retirement plan.
- 18.4.4 Death of Separated Employee. The estate of any full-time employee who: a) has separated from service with the City and has not been terminated for cause as defined by San Jose Municipal Code Section 3.04.1370 but had retained vesting rights in a retirement system according to provisions in the SJMC, and; b) dies prior to becoming eligible for retirement allowances as cited under provisions of the SJMC, and; c) has at the time of death credit for at least 15 years of service in the applicable retirement plan.
- 18.5 Effective December 31, 2011, for purposes of calculating a sick leave payout, employees' sick leave balances and hourly rates shall be frozen. This means that an

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employee will receive no more for a sick leave payout, after having met the requirements set forth above, than he or she would have been entitled to on December 31, 2011. Any sick leave usage after December 31, 2011, will come first from the sick leave balance accrued after December 31, 2011. An employee will continue to accrue sick leave after December 31, 2011, but it may not be used for sick leave payout purposes.

For example, if an employee's hourly rate is \$40 and his or her sick leave balance is 1000 hours on December 31, 2011, then if he or she meets the eligibility requirements contained herein, the payout of a sick leave balance at the time of retirement will be based on the formula below, and shall be based on no more than 1000 hours and an hourly rate of no more than \$40. This will occur even if the employee has subsequently earned more than 1000 hours in sick leave or received a pay increase to an hourly rate higher than \$40. In this example, if the employee does not have available sick leave to use that was accrued after December 31, 2011, and uses sick leave and reduces their sick leave balance on December 31, 2011, to 800 hours, they will only be entitled to a sick leave payout of 800 hours, regardless of any sick leave accrued after December 31, 2011. This means that if sick leave payout hours are reduced by usage, they are not able to be re-established in the sick leave balance subject to payout.

### 18.6 Payout shall be determined as follows.

18.6.1 Payout shall be determined as follows: If a full-time or eligible part-time employee at the time of retirement or death has earned unused sick leave hours, the employee or Estate shall be paid the equivalent of a specified percent of their hourly rate of pay as of December 31, 2011, multiplied by the total number of accumulated and unused hours of sick leave as of December 31, 2011 (minus any sick leave hours as of December 31, 2011, which were used), as follows:

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|-------------------------------------|--|
| <u>18.6.2 Less than 400 hours -</u> | <u>Hours accumulated x 50% of final hourly rate;</u> |
| <u>or 400 - 799 hours -</u>         | <u>Hours accumulated x 60% of final hourly rate;</u> |
| <u>or 800 - 1200 hours -</u>        | <u>Hours accumulated x 75% of final hourly rate.</u> |

### 18.7 Use of previously accumulated sick leave hours. For purposes of determining the total number of accumulated and unused hours of sick leave of a full-time employee at the time of retirement or death, unused sick leave from prior periods of employment before December 31, 2011, with the City shall be used. However, previously accumulated sick leave shall be credited to the employee for use during an employee's current employment period.